

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

PENNY RUMSEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

BIRCH COMMUNICATIONS, INC.
d/b/a LIGHTYEAR WIRELESS, a
Georgia corporation,

Defendant.

Case No.: 2:14-cv-12700

Hon. Gershwin A. Drain

Mag. Judge R. Steven Whalen

**STIPULATION AND ORDER TO WITHDRAW PLAINTIFF'S
PENDING RENEWED MOTION FOR CLASS CERTIFICATION [#9]**

Plaintiff Penny Rumsey ("Plaintiff") and Defendant Birch Communications, Inc. ("Defendant") (collectively, the "Parties"), hereby stipulate that Defendant shall not "pick off" Plaintiff by tendering a sum of monies that would moot her individual claims, and that Plaintiff shall withdraw her pending motion for class certification (dkt. 9) without prejudice.

WHEREAS, on July 9, 2014, Plaintiff filed her class action complaint against Defendant and at the same time, filed a motion for class certification requesting, among other things, that the Court reserve ruling on the issue of class certification until after the Parties have had a sufficient opportunity to commence and complete discovery related to the requirements of Fed. R. Civ. P. 23 for the

maintenance of this action as a class action (dkt. 2)¹;

WHEREAS, as explained in footnote 1 of that brief, Plaintiff's motion for class certification was filed in order to avoid having her class claims mooted through an offer of individual settlement, consistent with *Brunet v. City of Columbus*, 1 F.3d 390, 399-400 (6th Cir. 1993) and *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896-97 (7th Cir. 2011);

WHEREAS, Defendant has agreed that Defendant and its counsel will not assert that the tender by Defendant of any individual compromise or settlement offer provides a basis for contending that Plaintiff will not be an adequate class representative, that Plaintiff lacks standing, or that Plaintiff's claim is moot;

NOW THEREFORE, the Parties, through their counsel of record, hereby stipulate and agree as follows:

1. Defendant expressly agrees that any individual compromise or settlement offer made by Defendant, and its receipt by Plaintiff or her counsel, shall not be asserted as a basis for contending that Plaintiff will not be an adequate class representative, that Plaintiff lacks standing, or that Plaintiff's claim is moot.

2. Plaintiff hereby withdraws her motion for class certification without prejudice to its re-filing at a later time.

¹In response to this Court's July 11, 2014 Order, Plaintiff filed a Renewed Motion for Class Certification, again requesting that the Court reserve ruling on the motion until after the Parties have an opportunity to complete class discovery. (Dkt. 9.)

IT IS SO STIPULATED.

Dated: October 1, 2014

By: /s/ John C. Ochoa
One of Plaintiff's Attorneys

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*Admission to be sought.

Attorneys for Plaintiff

Dated: October 1, 2014

By: /s/ Michael Donnelly
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SO ORDERED:

Dated this 1st day of OCTOBER, 2014

/s/ Gershwin A. Drain
The Honorable Gershwin A. Drain
United States District Judge